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SUBJECT: Senegal's local elections: Legal Shenanigans

¶1. (SBU) Summary: On March 19, the National Electoral Committee (CENA) using a Supreme Court ruling that affirmed its authority to do so, ordered GOS authorities in the region of Diourbel to stop the ruling party from participating in the March 22 local elections in ten rural districts where they had missed the deadline to submit their party lists. However, in a blatant violation of the law, the Minister of Interior issued a statement ordering the local authorities in the concerned communities to include the aforementioned party lists and come Election Day they had done so. End Summary.

Ruling Party Violates Deadline

¶2. (SBU) The case on which the Supreme Court ruled was initiated by the CENA against the Ministry of Interior in charge of organizing elections in Senegal. The ruling Democratic Party of Senegal (PDS), under the SOPI coalition umbrella, had missed the deadline to present its candidates in ten rural communities in NDindy and Ndoulo, in the Diourbel region. It is alleged GOS representatives in those two communities had put the fix in to cover this oversight. The National Electoral Committee took the case to the Court of Appeals of Dakar, which ruled that there was not enough evidence to prove that the GOS acted wrongfully allowing SOPI to compete.

The Power of Interpretation

¶3. (SBU) The National Electoral Committee then took the case to the Supreme Court. In its March 16 ruling, the Supreme Court confirmed that the Court of Appeals of Dakar had the legal authority to consider and rule on the case, but that the CENA had the implicit right to exercise the prerogatives entrusted to it by law and that those prerogatives were not subject to judicial review. In other words, the Supreme Court found that the CENA should not ask the courts to do something that the law had already given it the power to do.

Ball in CENA's Court

¶4. (SBU) The Chair of the Diourbel branch of the National Electoral Committee played a pivotal role in this case. Assane Dioma Ndiaye has a reputation as a brilliant attorney. He chairs the human rights organization ONDH and he is also the President of the Electoral Committee of Diourbel. He initiated the Court case against the GOS. He told Embassy staff that after the Supreme Court ruling he had threatened to resign if the National Electoral Committee had not acted by March 20. In his view, The Supreme Court had sent the ball back to the Committee and they had to act. On March 19, CENA unanimously decided to exercise its prerogative and ordered the Prefects overseeing the aforementioned districts to remove from the ballots lists of the ruling party's candidates.

Minister of the Interior Breaks the Law

¶5. (SBU) Following CENA's decision, the Minister of Interior announced that he had no intention of complying with it, in spite of the Supreme Court decision specifically confirming CENA's authority to rule on the matter. The Minister of Interior unilaterally declared CENA's ruling unconstitutional and refused to give the

order to the local prefect to remove the ruling party's ballots from contention. Come the day of the election, US Embassy observers visited the aforementioned municipalities and noted that the SOPI ballots were still in play. However, in a belated piece of civic justice, the SOPI coalition was crushed by the opposition Benno coalition in nine of the ten communities in question.

COMMENT

15. (SBU) Although the Senegalese Electoral Code was already fairly clear regarding the powers of the National Electoral Committee, the Court's ruling has the merit of interpreting it for the GOS administrators as well as the Committee's members. This first landmark ruling of the newly established Supreme Court showed the Court's finesse and courage in handling what was a very sensitive politically-loaded issue. The ruling gave the CENA officials the backing they needed to make a decision the ruling party was sure to not like. Up to that point, this matter speaks to Senegal's strengths as a democracy. Unfortunately, the Minister of Interior's decision demonstrates that the rule of law is not always respected by the ruling party.
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